

Telephone: (203) 461-7000  
Facsimile: (203) 595-8266

**Walker Digital, LLC****Fax**

**To:** PATENT EXAMINER P. ELISCA - USPTO **From:** VERONIKA S. LELIEVER

**Fax:** 703.305.7687

**Pages:** 15

**Phone:** 703.305.3987

**Date:** November 4, 2002

**Re:** App. Serial No. 09/221,099

**Phone:** 203-461-7035

☒ Urgent ☒ For Review ☐ Please Comment ☐ Please Reply ☐ Please Recycle

• **Comments:**

DUPLICATE OF

**FORMAL RESPONSE FILED SEPTEMBER 9, 2002**

**Re:** Application Serial No. 09/221,099, Attorney Docket No. 98-112  
**Titled:** "PRE-SALE DATA BROADCAST SYSTEM AND METHOD"

Responsive to the Notice of Abandonment, mailed 10.28.02, (see copy attached) for Applicant's failure to timely file a proper reply to the Office letter mailed on March 8, 2002, please find enclosed copy of Transmittal Letter, Combined Amendment & Petition for Extension of Time Under 37 CFR 1.136(a), Assertion of Small Entity Status and Amendment & Response to Non-final Office Action as timely filed on September 9, 2002.

Additionally forwarded is a copy of Return Receipt Postcard clearly indicating receipt of the above referenced documentation by the USPTO time stamp dated September 16, 2002.

**CERTIFICATE OF TRANSMISSION**

I hereby certify that this correspondence is being  
Facsimile Transmitted to the United States Patent  
and Trademark Office (Fax No. 703.305.7687) on  
November 4, 2002.

Dated: 11.4.02 By:

Veronika S. Leliever

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Veronika S. Leliever

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NOV 04 2002

GROUP 3000



## UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER OF PATENTS AND TRADEMARKS  
Washington, D.C. 20531  
www.uspto.gov

*Pre-Sale Data Broadcast CIP*

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/221,099	12/28/1998	JAY S. WALKER	WD2-98-112	5153

22927 7590 10/28/2002

WALKER DIGITAL  
FIVE HIGH RIDGE PARK  
STAMFORD, CT 06905

**COPY**

EXAMINER

ELISCA, PIERRE E

ART UNIT

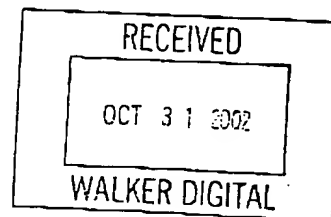
PAPER NUMBER

3621

DATE MAILED: 10/28/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

OFFICIAL



**Notice of Abandonment**

Application No.

09/221,099

Applicant(s)

Walker et al.

Examiner

Pierre E. Eliase

Art Unit

3621

— The MAILING DATE of this communication appears on the cover sheet with the correspondence address —

This application is abandoned in view of:

1. ☒ Applicant's failure to timely file a proper reply to the Office letter mailed on Mar 8, 2002.
- (a) ☐ A reply was received on \_\_\_\_\_ (with a Certificate of Mailing or Transmission dated \_\_\_\_\_), which is after the expiration of the period for reply (including a total extension of time of \_\_\_\_\_ month(s)) which expired on \_\_\_\_\_.
- (b) ☐ A proposed reply was received on \_\_\_\_\_, but it does not constitute a proper reply under 37 CFR 1.113(a) to the final rejection.
- (A proper reply under 37 CFR 1.113 to a final rejection consists only of: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114).
- (c) ☐ A reply was received on \_\_\_\_\_ but it does not constitute a proper reply, or a bona fide attempt at a proper reply, to the non-final rejection. See 37 CFR 1.85(a) and 1.111. (See explanation in box 7 below).
- (d) ☒ No reply has been received.
2. ☐ Applicant's failure to timely pay the required issue fee and publication fee, if applicable, within the statutory period of three months from the mailing date of the Notice of Allowance (PTOL-85).
- (a) ☐ The issue fee and publication fee, if applicable, was received on \_\_\_\_\_ (with a Certificate of Mailing or Transmission dated \_\_\_\_\_), which is after the expiration of the statutory period for payment of the issue fee (and publication fee) set in the Notice of Allowance (PTOL-85).
- (b) ☐ The submitted issue fee of \$ \_\_\_\_\_ is insufficient. A balance of \$ \_\_\_\_\_ is due.
- The issue fee required by 37 CFR 1.18 is \$ \_\_\_\_\_. The publication fee, if required by 37 CFR 1.18(d) is \$ \_\_\_\_\_.
- (c) ☐ The issue fee and publication fee, if applicable, has not been received.
3. ☐ Applicant's failure to timely file corrected drawings as required by, and within the three-month period set in, the Notice of Allowability (PTO-37).
- (a) ☐ Proposed new formal drawings were received on \_\_\_\_\_ (with a Certificate of Mailing or Transmission dated \_\_\_\_\_), which is after the expiration of the period for reply.
- (b) ☐ No corrected drawings have been received.
4. ☐ The letter of express abandonment which is signed by the attorney or agent of record, the assignee of the entire interest, or all of the applicants.
5. ☐ The letter of express abandonment which is signed by an attorney or agent (acting in a representative capacity under 37 CFR 1.34(a)) upon the filing of a continuing application.
6. ☐ The decision by the Board of Patent Appeals and Interferences rendered on \_\_\_\_\_ and because the period for seeking court review of the decision has expired and there are no allowed claims.
7. ☐ The reason(s) below:



Petitions to revive under 37 CFR 1.137(a) or (b), or requests to withdraw the holding of abandonment under 37 CFR 1.181, should be promptly filed to minimize any negative effects on patent term.

**COPY**

Veronika S. Leliever  
Intellectual Property Department  
Walker Digital Management, LLC  
Five High Ridge Park  
Stamford, CT 06905

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NOV 04 2002

GROUP 3600

Commissioner for Patents:

Date Received:

Applicant: JAY S. WALKER et al.  
Serial No.: 09/221,099  
Filing Date: December 28, 1998

Commissioner for Patents:

Date Received:

Applicant: JAY S. WALKER et al.  
Serial No.: 09/221,099  
Filing Date: December 28, 1998  
Title: PRE-SALE DATA BROADCAST SYSTEM AND METHOD  
(98-112)

Sir:

Please acknowledge receipt of the following papers by stamping the date received on this card and returning the same to the addressee.

- Transmittal Letter, 1 pg. (x2);
- Combined Amendment & Petition for Extension of Time Under 37 CFR (2 pp.) (x2);
- Assertion of Small Entity Status, 1 pg.; and
- Amendment & Response to Non-final Office Action, (4 pp.).

Date mailed: September 9, 2002.



**TRANSMITTAL LETTER**  
**(General - Patent Pending)**

Docket No.  
**98-112**

In Re Application Of:

**JAY S. WALKER et al.**
Serial No.  
**09/221,099**

Filing Date  
**December 28, 1998**

Examiner  
**P. E. Elisca**

Group Art Unit  
**2161**

Title:

**PRE-SALE DATA BROADCAST SYSTEM AND METHOD**
**TO THE ASSISTANT COMMISSIONER FOR PATENTS:**

Transmitted herewith is:

**Combined Amendment & Petition for Extension of Time, 2 pp., (x2);**  
**Assertion of Small Entity Status, 1 pg.;**  
**Amendment & Response to Non-final Office Action, 4 pp.; and**  
**Return Receipt Postcard.**

**CRITICAL**

in the above identified application.

- ☐ No additional fee is required.
- ☐ A check in the amount of \_\_\_\_\_ is attached.
- ☒ The Assistant Commissioner is hereby authorized to charge and credit Deposit Account No. **50-0271** as described below. A duplicate copy of this sheet is enclosed.
- ☒ Charge the amount of **\$460.00**
- ☒ Credit any overpayment.
- ☒ Charge any additional fee required.

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NOV 04 2002

**GROUP 3600**Dated: **September 9, 2002**

**Steven M. Santisi**  
**Attorney for Applicants**  
**Walker Digital, LLC**  
**PTO Registration No. 40,157**  
**203.461.7054/phone**  
**203.461.7300/fax**

Customer No. **22927****Santisi@walkerdigital.com**

CC:

I certify that this document and fee is being deposited  
 September 9, 2002 with the U.S. Postal Service as  
 first class mail under 37 C.F.R. 1.8 and is addressed to the  
 Assistant Commissioner for Patents, Washington, D.C.  
 20231.

*19. S. Leiever*  
 Signature of Person Mailing Correspondence
**Veronika S. Leiever**

Typed or Printed Name of Person Mailing Correspondence

**TRANSMITTAL LETTER**  
**(General - Patent Pending)**Docket No.  
98-112

In Re Application Of:

JAY S. WALKER et al.

Serial No.

09/221,099

Filing Date

December 28, 1998

Examiner

P. E. Elisca

Group Art Unit

2161

Title:

PRE-SALE DATA BROADCAST SYSTEM AND METHOD

TO THE ASSISTANT COMMISSIONER FOR PATENTS:

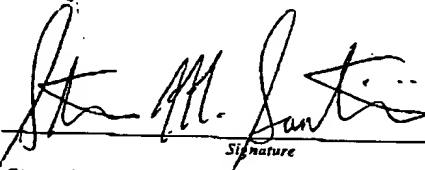
Transmitted herewith is:

Combined Amendment & Petition for Extension of Time, 2 pp., (x2);  
Assertion of Small Entity Status, 1 pg.;  
Amendment & Response to Non-final Office Action, 4 pp.; and  
Return Receipt Postcard.

in the above identified application.

- ☐ No additional fee is required.
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- ☒ Charge any additional fee required.

Dated: September 9, 2002

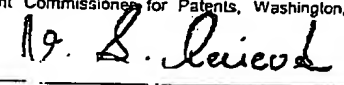
  
Signature  
Steven M. Santisi  
Attorney for Applicants  
Walker Digital, LLC  
PTO Registration No. 40,157  
203.461.7054/phone  
203.461.7300/fax

Customer No. 22927

Santisi@walkerdigital.com

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20231.

  
Signature of Person Mailing Correspondence

Veronika S. Leliever

Typed or Printed Name of Person Mailing Correspondence

**COMBINED AMENDMENT & PETITION FOR EXTENSION OF  
TIME UNDER 37 CFR 1.136(a) (Small Entity)**

**Docket No.**  
**98-112**

In Re Application Of: **JAY S. WALKER et al.**

Serial No.  
09/221,099

**Filing Date**  
**December 28, 1998**

Examiner  
**Pierre E. Elisca**

Group Art Unit  
2161

Invention: **PRE-SALE DATA BROADCAST SYSTEM AND METHOD**

TO THE ASSISTANT COMMISSIONER FOR PATENTS:

This is a combined amendment and petition under the provisions of 37 CFR 1.136(a) to extend the period for filing a response to the Office Action of March 8, 2002 in the above-identified application.

The requested extension is as follows (check time period desired):

☐ One month      ☐ Two months      ☒ Three months      ☐ Four months      ☐ Five months

from: June 8, 2002  
Date

until: September 8, 2002  
Date

**A verified statement of small entity status as a small entity under 37 CFR 1.27:**

☒ is enclosed.

☐ has already been filed in this application.

The fee for the amendment and extension of time has been calculated as shown below:

### CLAIMS AS AMENDED

	CLAIMS REMAINING AFTER AMENDMENT	HIGHEST # PREV. PAID FOR	NUMBER EXTRA CLAIMS PRESENT	RATE	ADDITIONAL FEE
TOTAL CLAIMS	12 -	91 =	0	x \$9.00	\$0.00
INDEP. CLAIMS	4 -	23 =	0	x \$42.00	\$0.00
FEE FOR AMENDMENT					\$0.00
FEE FOR EXTENSION OF TIME					\$460.00
TOTAL FEE FOR AMENDMENT AND EXTENSION OF TIME					\$460.00

**COMBINED AMENDMENT & PETITION FOR EXTENSION OF  
TIME UNDER 37 CFR 1.136(a) (Small Entity)**Docket No.  
98-112

The fee for the amendment and extension of time is to be paid as follows:

- ☐ A check in the amount of \$460.00 for the amendment and extension of time is enclosed.
- ☒ Please charge Deposit Account No. 50-0271 in the amount of \$460.00  
A duplicate copy of this sheet is enclosed.
- ☒ The Commissioner is hereby authorized to charge payment of the following fees associated with this communication or credit any overpayment to Deposit Account No. 50-0271  
A duplicate copy of this sheet is enclosed.
- ☒ Any additional filing fees required under 37 C.F.R. 1.16.
- ☒ Any patent application processing fees under 37 CFR 1.17.
- ☒ If an additional extension of time is required, please consider this a petition therefor and charge any additional fees which may be required to Deposit Account No. 50-0271 A duplicate copy of this sheet is enclosed.

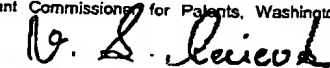
  
Signature

Dated: September 9, 2002

Steven M. Santisi  
Attorney for Applicants  
Walker Digital, LLC  
PTO Registration No. 40,157  
203.461.7054/phone  
203.461.7300/fax

Customer No. 22927  
Santisi@walkerdigital.com  
cc:

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first class mail under 37 C.F.R. 1.8 and is addressed to the  
Assistant Commissioner for Patents, Washington, D.C.  
20231.



Signature of Person Mailing Correspondence

Veronika S. Leliever

Typed or Printed Name of Person Mailing Correspondence



**COMBINED AMENDMENT & PETITION FOR EXTENSION OF  
TIME UNDER 37 CFR 1.136(a) (Small Entity)**

Docket No.  
98-112

In Re Application Of: JAY S. WALKER et al.

Serial No.  
09/221,099

Filing Date  
December 28, 1998

Examiner  
Pierre E. Elisca

Group Art Unit  
2161

Invention: PRE-SALE DATA BROADCAST SYSTEM AND METHOD

TO THE ASSISTANT COMMISSIONER FOR PATENTS:

This is a combined amendment and petition under the provisions of 37 CFR 1.136(a) to extend the period for filing a response to the Office Action of March 8, 2002 in the above-identified application.

Date

The requested extension is as follows (check time period desired):

☐ One month    ☐ Two months    ☒ Three months    ☐ Four months    ☐ Five months

from: June 8, 2002    until: September 8, 2002

Date

Date

A verified statement of small entity status as a small entity under 37 CFR 1.27:

- ☒ is enclosed.  
☐ has already been filed in this application.

The fee for the amendment and extension of time has been calculated as shown below:

**CLAIMS AS AMENDED**

	CLAIMS REMAINING AFTER AMENDMENT	HIGHEST # PREV. PAID FOR	NUMBER EXTRA CLAIMS PRESENT	RATE	ADDITIONAL FEE
TOTAL CLAIMS	12 -	91 =	0	x \$9.00	\$0.00
INDEP. CLAIMS	4 -	23 =	0	x \$42.00	\$0.00
FEE FOR AMENDMENT					\$0.00
FEE FOR EXTENSION OF TIME					\$460.00
TOTAL FEE FOR AMENDMENT AND EXTENSION OF TIME					\$460.00

**COMBINED AMENDMENT & PETITION FOR EXTENSION OF  
TIME UNDER 37 CFR 1.136(a) (Small Entity)**Docket No.  
98-112

The fee for the amendment and extension of time is to be paid as follows:

- ☐ A check in the amount of \$460.00 for the amendment and extension of time is enclosed.
- ☒ Please charge Deposit Account No. 50-0271 in the amount of \$460.00  
A duplicate copy of this sheet is enclosed.
- ☒ The Commissioner is hereby authorized to charge payment of the following fees associated with this communication or credit any overpayment to Deposit Account No. 50-0271  
A duplicate copy of this sheet is enclosed.
- ☒ Any additional filing fees required under 37 C.F.R. 1.16.
- ☒ Any patent application processing fees under 37 CFR 1.17.
- ☒ If an additional extension of time is required, please consider this a petition therefor and charge any additional fees which may be required to Deposit Account No. 50-0271 A duplicate copy of this sheet is enclosed.

Signature

Dated: September 9, 2002

Steven M. Santisi  
Attorney for Applicants  
Walker Digital, LLC  
PTO Registration No. 40,157  
203.461.7054/phone  
203.461.7300/fax

Customer No. 22927  
Santisi@walkerdigital.com  
cc:

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September 9, 2002 with the U.S. Postal Service as  
first class mail under 37 C.F.R. 1.8 and is addressed to the  
Assistant Commissioner for Patents, Washington, D.C.  
20231.

Signature of Person Mailing Correspondence

Veronika S. Leliever

Typed or Printed Name of Person Mailing Correspondence

PATENT

Application No. 09/221,099  
Attorney Docket No.: 98-112

## IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of: WALKER et al.

Serial No.: 09/221,099

Filing Date: December 28, 1998

For: PRE-SALE DATA BROADCAST  
SYSTEM AND METHOD

) Examiner: P. E. Elisca  
) Group Art Unit: 2161  
) Attorney Docket No: 98-112  
) Customer No.: 22927  
) Notification of Fee Status Change  
) Pursuant to 37 CFR § 1.27

Assistant Commissioner for Patents  
Washington, D.C. 20231

## ASSERTION OF SMALL ENTITY STATUS

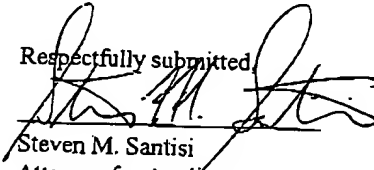
Dear Sir:

The assignee of the above-identified application claims small entity status. This notification is made pursuant to 37 CFR §1.27.

If the Examiner has any questions about this status change, the Examiner is invited to contact the undersigned at (203) 461-7054. While no fees are believed due in connection with this paper, please charge any fees that may be required for this paper, or with any other papers filed in connection with this application to Deposit Account No. 50-0271.

September 9, 2002  
Date

Respectfully submitted

  
Steven M. Santisi  
Attorney for Applicants  
Walker Digital, LLC  
Registration No. 40,157  
(203) 461-7054 /direct  
(203) 461-7300 /fax  
santisi@walkerdigital.com

PATENT

Application Serial No. 09/221,099  
Attorney Docket No. 98-112

## IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicants: Walker et al. ) Group Art Unit: 2161  
Application No.: 09/221,099 ) Examiner: Elisca, Pierre E.  
Filed: December 28, 1998 ) (703) 305-3987  
For: PRE-SALE DATA BROADCAST ) (703) 308-9051 /fax  
SYSTEM AND METHOD ) **RESPONSE to the Non-final**  
Customer No. 22927 ) **Office Action mailed March 8, 2002**  
 ) **(Paper No. 16)**  
 ) Attorney Docket No. 98-112  
 )  
 )  
 )

## CERTIFICATE OF MAILING

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope with sufficient postage and addressed to: Assistant Commissioner for Patents, Washington, D.C. 20231 on September 9, 2002.

Dated: September 9, 2002 By:

Veronika S. Leliever

Assistant Commissioner for Patents  
Washington, D.C. 20231

Dear Sir:

In response to the Non-Final Office Action mailed March 8, 2002, (Paper No. 16), entry of the following amendments into and consideration of the following remarks regarding the above-identified application are respectfully requested.

PATENT

Application Serial No. 09/221,099  
Attorney Docket No. 98-112

## REMARKS

Claims 17 to 26, 80, 86 to 87 are pending in the present application.

Claims 17, 80, 86, 87 are independent.

## Section 103(a) Rejections

All claims are rejected as being unpatentable over a combination of Fraser (WO 97/08638), West (U.S. Patent No. 5,845,259) and now Jones (U.S. Patent No. 5,832,458). Applicants respectfully traverse the Examiner's Section 103(a) rejection.

The references, alone or in combination, do not disclose or suggest:

*transmitting said transaction data to a remote server of a manufacturer during a transaction session for determination of a possible substitute product to be offered to said consumer*

West, like Fraser and Jones, does not address the ability of a manufacturer to determine a possible substitute product to be offered to a consumer during a transaction session.

The newly cited Jones reference is intended to ensure the accurate and timely settlement between manufacturers and the retailers of their products when the manufacturer issues coupons or when the manufacturer agrees to a temporary price reduction in return for retailer support that should lead to increased sales volumes. (col. 4, lines 60 - 67) Jones describes that coupons are normally redeemed by manufacturers of the goods to which the coupons relate. Manufacturers reimburse the retail stores accepting the coupons. (col. 3, lines 30 - 33.) The Jones system conducts an electronic audit for use by manufacturers during settlement. (col. 3, lines 45 - 49) The electronic audit of coupon redemption has safeguards against deliberate or inadvertent misredemption. (col. 4, lines 14 - 17)

Accordingly, Jones has nothing to do with, inter alia, determining possible substitute products.

No Motivation to Combine

PATENT

Application Serial No. 09/221,099  
Attorney Docket No. 98-112

Absent hindsight, there is no motivation to combine the references in the manner proposed.

As best as Applicants may ascertain, the stated motivation to select and incorporate portions of the West reference is that West "discloses a point of sale including a terminal having a data reader transaction data [sic], a remote retailer and manufacturer or remote server retailer manufacturer coupon redemption [sic]," and that the combination of West and Eraser would eliminate "the need for the manual collection of data transmission [sic]." (Office Action, page 3, last paragraph to page 4, first paragraph)

As best as Applicants may ascertain, the stated motivation to select and incorporate portions of the Jones reference is that Jones "discloses an audit system that is remotely located from the retail store for receiving processed retail sales transaction data for subsequent use by MANUFACTURER ... which is equivalent to Applicants arguments." (Office Action, page 4, second paragraph)

Neither of the above statements from the Office Action amount to a motivation to select and combine the references in the manner proposed. Accordingly, the record does not show why one of ordinary skill at the time of the invention would have selected the references and combined them in the manner proposed.

#### Conclusion

For the foregoing reasons it is submitted that all of the claims are in condition for allowance and the Examiner's early re-examination and reconsideration are respectfully requested.

Alternatively, if there remains any question regarding the present application or any of the cited references, or if the Examiner has any further suggestions for expediting allowance of the present application, the Examiner is cordially requested to contact Dean Alderucci at telephone number 203-461-7337 or via electronic mail at Alderucci@WalkerDigital.com.

#### Petition for Extension of Time to Respond

Applicants hereby petition for a three-month extension of time with which to respond to the Office Action. Please charge \$460.00 for this petition to our Deposit Account No. 50-0271.

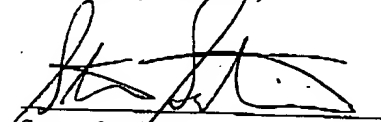
PATENT

Application Serial No. 09/221,099  
Attorney Docket No. 98-112

Please charge any additional fees that may be required for this Response, or credit any overpayment to Deposit Account No. 50-0271.

If an extension of time is required, or if an additional extension of time is required in addition to that requested in a petition for an extension of time, please grant a petition for that extension of time which is required to make this Response timely, and please charge any fee for such extension to Deposit Account No. 50-0271.

Respectfully submitted,



September 9, 2002  
Date

Steven Santisi  
Attorney for Applicants  
Walker Digital, LLC  
Registration No. 40,157  
Santisi@walkerdigital.com  
203-461-7054 / voice  
203-461-7300 / fax